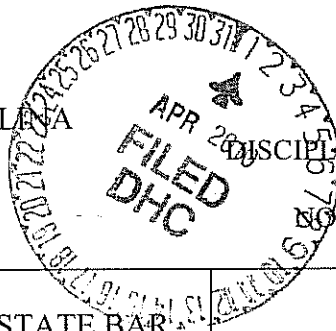


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
10 DHC 17

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

PHILLIP G. ROSE, Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Phillip G. Rose ("Rose" or "Defendant"), was admitted to the North Carolina State Bar in August 1995, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Rules of Professional Conduct.

Upon information and belief:

FIRST CLAIM FOR RELIEF

3. During all or part of the relevant periods referred to herein, Rose was engaged in the practice of law in the State of North Carolina and maintained a law office in Raleigh, Wake County, North Carolina.

4. On or about June 28, 2006, Rose was the closing attorney for a real estate transaction involving a property located at 237 Broadgait Brae, Cary, NC (hereinafter "Broadgait Brae transaction").

5. As the closing attorney, Rose represented the buyer/borrower, Lee C. Brisson, (hereinafter "buyer" or "borrower") and the lender, SunTrust Mortgage, Inc., (hereinafter "lender" or "SunTrust").

6. Rose prepared a HUD-1 Settlement Statement (hereinafter "HUD-1") for the transaction which showed receipt of cash at closing from the buyer and the disbursement of the sales proceeds to the seller, Maylene L. Jackson (hereinafter "seller").

7. The HUD-1 for the Broadgait Brae transaction represented that the contract sales price was \$291,500.00; that SunTrust made a loan of \$233,200.00; that the buyer brought \$59,652.31 to the closing; and that \$50,990.29 was disbursed to the seller, in net sale proceeds. A true and accurate copy of the HUD-1 Settlement Statement for this transaction is attached hereto as Exhibit A.

8. The HUD-1 prepared by Rose was false in that the buyer brought no money to the closing, and Rose did not disburse \$50,930.29 to the seller.

9. The HUD-1 was also false in that the actual contract sales price was approximately \$50,000.00 less than the contract sales price reflected on the HUD-1.

10. Rose provided the HUD-1 to SunTrust.

11. Rose knew, at the time he prepared the HUD-1 provided to SunTrust for the Broadgait Brae transaction, that the HUD-1 contained false information about the purchase price, the amount of net sales proceeds disbursed to the seller, and the amount of cash brought to the closing by the buyer/borrower.

12. Rose, as closing attorney, was responsible for ensuring the HUD-1 accurately recited the receipt and disbursement of funds in the transaction.

13. At the bottom of page 1 of the HUD-1 for the Broadgait Brae transaction is printed the following:

"To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction."

14. The certification recited in paragraph 13 above was false.

15. Rose signed the certification as closing attorney just above the "warning" on the HUD-1, which states "It is a crime to knowingly make false statements to the United States on this or any similar form."

16. Rose knew when he signed the HUD-1, including the certification recited in paragraph 13 above, that the certification was false.

17. SunTrust's closing instructions required Rose to obtain a properly executed occupancy affidavit from the borrower/buyer.

18. The deed of trust securing the loan from SunTrust contained the following provision:

“Borrower shall occupy, establish, and use the property as Borrower’s principal residence within 60 days after the execution of this security instrument and shall continue to occupy the property as Borrower’s principal residence for at least one year after the date of occupancy,”

19. At the time Rose closed the Broadgait Brae transaction and recorded the deed of trust, Rose knew the borrower did not intend to occupy the premises and knew that the borrower intended to rent the property back to the seller.

20. Rose concealed from SunTrust the following material facts:

- a) that the borrower did not intend to occupy the property as his principal residence;
- b) that the borrower intended to lease the property back to the seller;
- c) that the purchase price of the property was approximately \$50,000.00 less than the contract sales price listed on the HUD-1;
- d) that the buyer/borrower did not bring \$59,652.31 to the closing; and
- e) that he did not disburse \$50,990.29 to the seller in net proceeds.

THEREFORE, Plaintiff alleges that Defendant’s foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By knowingly preparing a HUD-1 Settlement Statement containing false information, by falsely certifying that the HUD-1 was an accurate statement of the receipts and disbursements, and by providing that false HUD-1 to the mortgage lender for the Broadgait Brae transaction, Rose engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), intentionally prejudiced his client, the lender, during the course of the professional relationship in violation of Rule 8.4(g), and committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer to wit: violation of 18 U.S.C. § 1001 and/or 18 U.S.C. 1010, in violation of Rule 8.4(b);
- b) By knowingly closing the loan for the Broadgait Brae transaction in violation of the lender’s closing instructions, including instructions regarding occupancy of the property as the borrower’s principal residence, and by closing the loan with knowledge that the borrower did not intend to occupy the property as his principal residence, Rose engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), intentionally prejudiced his client, the lender, during the

course of the professional relationship in violation of Rule 8.4(g), and committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer to wit: violation of 18 U.S.C. § 1001 and/or 18 U.S.C. 1010, in violation of Rule 8.4(b); and

- c) By concealing material information from the lender, Rose engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), intentionally prejudiced his client, the lender, during the course of the professional relationship in violation of Rule 8.4(g), and committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer to wit: violation of 18 U.S.C. § 1001 and/or 18 U.S.C. 1010, in violation of Rule 8.4(b).

SECOND CLAIM FOR RELIEF

- 21. Paragraphs 1 – 20 are re-alleged and incorporated by reference herein.
- 22. On or about February 2, 2005, Rose was the closing attorney for a real estate transaction involving a property located at 2705 Omah Street, Durham, NC (hereinafter “Omah transaction”).
- 23. As the closing attorney, Rose represented the buyer/borrower, Sarah Lynn Evans, (hereinafter “buyer” or “borrower”) and the lender, Amtrust Mortgage Corporation (hereinafter “lender”).
- 24. Rose prepared a HUD-1 for this transaction which showed the receipt of cash from the buyer and disbursement of the sales proceeds to the seller.
- 25. The HUD-1 for the Omah transaction represented that the contract sales price was \$118,000.00; that the lender made a loan of \$106,200.00 to the buyer; that the buyer brought \$11,800.00 to the closing; and that \$20,619.37 was disbursed to the seller in net sales proceeds. A true and accurate copy of the HUD-1 for this transaction is attached hereto as Exhibit B.
- 26. The HUD-1 prepared by Rose was false in that the buyer brought no money to the closing. The \$11,800.00 cash to close the loan was provided by the seller rather than by the buyer/borrower.
- 27. The HUD-1 was also false in that the actual contract sales price was approximately ten percent less than the contract price reflected on the HUD-1.
- 28. Rose provided the false HUD-1 to the lender.
- 29. Rose knew, at the time he provided the false HUD-1 to the lender that the HUD-1 contained false information about the contract sales price and about cash purportedly brought to the closing by the buyer.

30. Rose, as closing attorney, was responsible for ensuring the HUD-1 accurately recited the receipt and disbursement of funds in the transaction.

31. Rose concealed from the lender the following material facts:

- a) that the purchase price of the property was approximately ten percent less than the contract price listed on the HUD-1;
- b) that the buyer/borrower did not bring \$11,800.00 to the closing; and
- c) that he did not disburse \$20,619.37 to the seller in net sales proceeds.

32. By signing the HUD-1 as the settlement agent, Rose certified and falsely asserted to the lender that the HUD-1 was an accurate statement of the receipts and disbursements made by him in the transaction.

33. Rose did not make a true and accurate account of the transaction by the HUD-1, which he prepared and provided to the lender.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By knowingly preparing a HUD-1 Settlement Statement containing false information, by falsely certifying that the HUD-1 was an accurate statement of the receipts and disbursements, and by providing that false HUD-1 to the mortgage lender for the Omaha transaction, Rose engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), intentionally prejudiced his client, the lender, during the course of the professional relationship in violation of Rule 8.4(g), and committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer to wit: violation of 18 U.S.C. § 1001 and/or 18 U.S.C. 1010, in violation of Rule 8.4(b); and
- b) By concealing material information from the lender, Rose engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), intentionally prejudiced his client, the lender, during the course of the professional relationship in violation of Rule 8.4(g), and committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer to wit: violation of 18 U.S.C. § 1001 and/or 18 U.S.C. 1010, in violation of Rule 8.4(b).

THIRD CLAIM FOR RELIEF

34. Paragraphs 1 – 33 are re-alleged and incorporated by reference herein.

35. On or about August 21, 2008 Rose was the closing attorney for two real estate transactions involving Lots 89 & 91 located at 650 Ganyard Farms Way, Durham, NC.

36. As the closing attorney, Rose represented the buyer/borrower, Freddie Williams, (hereinafter "buyer or borrower") and the lender, Equity Services, Inc., (hereinafter "lender" or "Equity Services").

37. Rose prepared a HUD-1's for the transactions which showed receipts of cash at closing from the buyer and the disbursement of the sale proceeds to the seller, Premier Investments, LLC (hereinafter "seller" or "Premier").

38. The HUD-1 for lot 89, 650 Ganyard Farms Way, represented that the contract sales price was \$146,000.00; that Equity Services made a loan of \$131,400.00; that the buyer brought \$17,627.78 to the closing; and that \$22,569.10 was disbursed to the seller, in net sales proceeds.

39. The HUD-1 for Lot 91, 650 Ganyard Farms Way, represented that the contract sales price was \$160,000.00; that Equity Services made a loan of \$144,000.00; that the buyer brought \$19,227.89 to the closing, and that \$34,728.25 was disbursed to the seller in net sales proceeds.

40. The HUD-1's for Lots 89 & 91 prepared by Rose were false in that buyer brought no money to the closings and did not provide any money to close the transactions.

41. Rose provided the HUD-1's for Lots 89 & 91 to Equity Services.

42. Rose knew, at the time he prepared the HUD-1's for Lots 89 & 91 provided to Equity Services, that the HUD-1's contained false information about the amount of cash brought to the closings by the buyer/borrower.

43. Rose, as closing attorney, was responsible for ensuring the HUD-1's accurately recited the receipt and disbursement of funds in the transactions.

44. As to each HUD-1 for Lots 89 & 91 Rose certified the following:

"To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction."

45. The certifications recited in paragraph 44 above were false.

46. Rose signed the certifications as the closing attorney just above the "warning", which states "It is a crime to knowingly make false statements to the United States on this or any similar form."

47. Rose concealed from Equity Services the fact that the buyer did not bring money to the closings for Lots 89 & 91 Ganyard Farms Way.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

- a) By knowingly preparing HUD-1 Settlement Statements containing false information, by falsely certifying that the HUD-1's were an accurate statement of the receipts and disbursements, and by providing those false HUD-1's to the mortgage lender for the two transactions involving Lots 89 & 91, Rose engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), intentionally prejudiced his client, the lender, during the course of the professional relationship in violation of Rule 8.4(g), and committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer to wit: violation of 18 U.S.C. § 1001 and/or 18 U.S.C. 1010, in violation of Rule 8.4(b); and
- b) By concealing material information from the lender, Rose engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), intentionally prejudiced his client, the lender, during the course of the professional relationship in violation of Rule 8.4(g), and committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer to wit: violation of 18 U.S.C. § 1001 and/or 18 U.S.C. 1010, in violation of Rule 8.4(b).

FOURTH CLAIM FOR RELIEF

48. Paragraph's 1-48 are re-alleged and incorporated by reference herein.

49. On or about August 26, 2008 Rose was the closing attorney for two real estate transactions involving Lots 90 & 92 located at 650 Ganyard Farms Way, Durham, NC.

50. As the closing attorney, Rose represented the buyer/borrower, Freddie Williams, (hereinafter "buyer" or "borrower") and the lender, JP Morgan Chase Bank, NA (hereinafter "lender" or "Morgan Chase").

51. Rose prepared HUD-1's for the transactions which showed receipt of cash at closing from the buyer and the disbursement of the sale proceeds to the seller, Premier Investments, LLC, (hereinafter "seller" or Premier").

52. The HUD-1 for lot 90, 650 Ganyard Farms Way, represented that the contract sales price was \$160,000.00; that Morgan Chase made a loan of \$144,000.00; that the buyer brought \$20,242.05 to the closing; and that \$32,206.77 was disbursed to the seller, in net sale proceeds.

53. The HUD-1 for Lot 92, 650 Ganyard Farms Way, represented that the contract sales price was \$160,000.00; that Morgan Chase made a loan of \$144,000.00; that the buyer brought \$20,247.05 to the closing, and that \$33,774.10 was disbursed to the seller in net sales proceeds.

54. The HUD-1's for Lots 90 & 92 prepared by Rose were false in that buyer brought no money to the closings and did not provide any money to close the transactions.

55. Rose provided the HUD-1's for Lots 90 & 92 to Morgan Chase.

56. Rose knew, at the time he prepared the HUD-1's for Lots 90 & 92 provided to Morgan Chase, that the HUD-1's contained false information about the amount of cash brought to the closings by the buyer/borrower.

57. Rose, as closing attorney, was responsible for ensuring the HUD-1's accurately recited the receipt and disbursement of funds in the transactions.

58. As to each HUD-1 for Lots 90 & 92 Rose certified the following:

"To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction."

59. The certifications recited in paragraph 58 above were false.

60. Rose signed the certifications as the closing attorney just above the "warning", which states "It is a crime to knowingly make false statements to the United States on this or any similar form."

61. Rose concealed, from Equity Services, the fact that the buyer did not bring money to the closings for Lots 90 & 92.

THEREFORE, Plaintiff alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C. Gen. Stat. § 84-28(b)(2) in that Defendant violated the Rules of Professional Conduct in effect at the time of the conduct as follows:

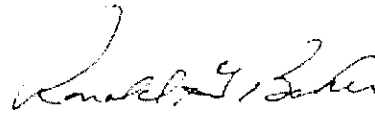
- a) By knowingly preparing HUD-1 Settlement Statement's containing false information, by falsely certifying that the HUD-1's were accurate statements of the receipts and disbursements, and by providing those false HUD-1's to the mortgage lender for Lot's 90 & 92 transaction, Rose engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), intentionally prejudiced his client, the lender, during the course of the professional relationship in violation of Rule 8.4(g), and committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer to wit: violation of 18 U.S.C. § 1001 and/or 18 U.S.C. 1010, in violation of Rule 8.4(b); and

- b) By concealing material information from the lender, Rose engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), intentionally prejudiced his client, the lender, during the course of the professional relationship in violation of Rule 8.4(g), and committed criminal acts reflecting adversely on his honesty, trustworthiness or fitness as a lawyer to wit: violation of 18 U.S.C. § 1001 and/or 18 U.S.C. 1010, in violation of Rule 8.4(b).

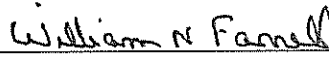
WHEREFORE, Plaintiff prays that:

- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;
- (2) Defendant be taxed with the costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

The 1 day of April, 2010



Ronald G. Baker, Chair
Grievance Committee



William N. Farrell
Deputy Counsel
State Bar No. 5596
The North Carolina State Bar
P.O. Box 25908
Raleigh, NC 27611
919-828-4620
Attorney for the Plaintiff